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ABSTRACT

Although the main purpose of a school district's evaluation system is to improve employees' performance, the evaluation procedures and the supporting documentation must also serve as evidence in the termination hearings of an unsatisfactory employee. Accordingly, this chapter provides practical advice to school administrators concerning documentation generated in the evaluation process that can be used, if necessary, to support a recommendation for dismissal. Five types of written memoranda are described, with examples of each: (1) memoranda to the administrator's files (used for minor infractions or deviations by the employee); (2) specific incident memoranda (used to record conferences with a teacher concerning more significant events); (3) summary memoranda (used to record conferences with a teacher in which a series of incidents, problems, or deficiencies are discussed); (4) visitation memoranda (used for observing on-the-job performance); and (5) formal assessment instruments (used to evaluate overall performance). The latter part of the chapter discusses factors to consider in termination proceedings, including timely notification, opportunity for remediation, and drawing up a recommendation for termination. The advice is summarized in three steps: (1) develop a sound evaluation system, (2) provide administrative inservice on evaluation policies and the proposed documentation system, and (3) apply in a way that preserves the personal dignity of the employees. (TE)

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Documentation of Employee Performance

Kelly Frels and Timothy Cooper

The principal purpose of a school district's evaluation system is to improve employees' performance so they can become successful and contribute to achieving the objectives of the district. But if the evaluation procedures and the follow-up assistance do not result in the performance level desired, then the employee must be replaced, either by resignation or termination. Thus the district's evaluation procedures and its supporting documentation system serve a secondary purpose — the removal of the unsatisfactory employee.

Depending on the specifics of the employee's contract, a school district must observe various degrees of procedural due process when terminating a person. In many situations this process culminates with a hearing before the board of education or a hearing panel to determine whether there is cause to terminate the employee. Chapter 4 dealt with the procedural requirements necessary to effect a termination. This chapter will provide practical advice to school administrators concerning the documentation to be generated and used in the evaluation process and, if necessary, to present at a hearing to support a recommendation for termination.

Procedural due process affords significant protection for employees, but it does not shield them from termination. Incompetent or insubordinate employees can and should be terminated. Due process requirements simply prescribe procedures that must be followed in

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carrying out those terminations. Of course, the permissible grounds for termination will usually be enunciated in state law, the teacher's contract, board policy, and/or a collective bargaining agreement. Therefore, those sources must be examined to determine the criteria on which employees must be judged and evaluated.

In public school employee termination hearings, school administrators are often faced with the charge that there is not enough documentation to support the termination or that there is little evidence to show that the administrator has attempted to assist the employee in improving performance. In other cases the claim is made that the administrator has collected or produced so much documentation that it is obvious the employee is being harassed. At still other employee termination hearings the complaint is made that the process is unfair because the employee did not know what was expected. The specifics may differ, but the complaints run along the lines of "I never saw that memorandum or had any such conferences regarding this situation." "You have padded the file." "I never had any of these meetings, and you never gave me a chance to face my accuser or defend myself." "Your memos were not specific enough to give me direction." "Why didn't you talk with me?" As a result of these types of complaints, administrators often are reluctant to bring a recommendation for termination, because the administrator recognizes that he, rather than the employee, is likely to be put on trial.

To ensure fair treatment of employees who are evaluated, a simple but effective system of documentation is needed, which can be used in conjunction with any school district's evaluation system. The documentation system used should be in compliance with the contractual schemes in the district and with state statutes. While the ultimate objective of the documentation system is to provide a communication process to help improve an employee's performance, the system should also provide the necessary documentation for the administrator to have confidence in recommending the employee's voluntary resignation or termination.

An effective documentation system is essential for preparing an administrator for a hearing before the board of education; for appeals and lawsuits filed with a state commissioner of education, an arbitrator, or a court; and also for discrimination complaints filed with the Equal Employment Opportunity Commission or the U.S. Department of Education. If there is a systematic documentation of poor performance before a teacher engages in public inflammatory statements, the hearing can address the performance deficiency and not get involved in extraneous matters. However, without such careful documentation of poor performance, a teacher could bring charges of harassment for making public statements and might be legally untouchable under First Amendment free speech rights[1] (see the discussion of the *Mt. Healthy* decision in chapters 3 and 4).

Elements of an Effective Documentation System

An effective documentation system for employee evaluations involves at least five types of written memoranda. First are memoranda to the administrator's files. These should be used sparingly to record less significant infractions or deviations by an employee. Second are specific incident memoranda used to record conferences with a teacher concerning more significant events. Third are summary memoranda used to record conferences with a teacher in which several incidents, problems, or deficiencies are discussed. Fourth are visitation memoranda used to record observations made of an employee's on-the-job performance. Fifth are formal assessment instruments used to evaluate the employee's overall performance.

The documentation of an employee's behavior and performance can be used for several purposes. First, it provides a continuing record for an administrator to follow an employee's actions and performance and to identify strengths, weaknesses, and problem areas. Second, it enables the employee to understand what problems have been identified and what corrective steps are necessary. Third, if an employee's performance does not improve, it serves as specific evidence to support a recommendation for termination.

The documentation system described below assumes that a school district has an ongoing evaluation plan. The procedures are designed to keep the volume of documents to a minimum, yet meet the need for full and complete documentation. The system attempts to be sensitive to the time constraints placed on school administrators.[2]

Memoranda to the File

Whenever an administrator observes an incident or behavior that is not of a significantly serious nature to require an immediate conference with the employee, but that should be considered in the employee's evaluation or at a later conference, it is appropriate for the administrator to prepare a short file memorandum. These file memoranda should be used sparingly. If an incident or series of incidents is in any way serious, the specific incident memorandum should be used. The memoranda to the file can be in various forms, such as a notation on a calendar or in a notebook with separate pages designated for specific individuals. They should include the name of the employee, the name or initials of the administrator making the entry, the date of the occurrence, and the facts of the event observed. These file memoranda can be used for the following limited purposes:

1. Conference with the employee concerning the incident or incidents and the preparation of a confirming memorandum

2. Assessment of the employee's performance
3. Refreshing the memory of the administrator for testimony at any proceeding or hearing relative to the employee's performance if the memos have not been incorporated into summary memoranda or other evaluation documents

Copies of these file memoranda need not be given routinely to the employee unless the employee requests them. Of course, under the public records acts in many states, the employee has the right to see them. There is no reason to keep these file memoranda secret from the employees. In fact, most administrators find it gives credibility to the system if employees are made aware of these memoranda and are encouraged to review any file memoranda made concerning their performance. Actually, the best practice is to incorporate the contents of these file memoranda into a summary memorandum or evaluation, which is given to the teacher at or following a conference. If a summary memorandum includes the information contained in file memoranda, the file memoranda should never have to be used again.

Even though it may not be the intention of the administrator to use these documents as evidence in future actions involving the employee, the memoranda should be written with the knowledge that copies may actually be introduced as evidence or a copy may be made available to the employee under the state's public records act. For example, if file memoranda are being used to refresh an administrator's memory at a hearing, in most states the attorney for the employee is entitled to see copies of the documents. Therefore, care should be taken not to write or record anything in a manner that could cause future embarrassment. A good practice is to record facts rather than make judgments or jump to conclusions. A file memorandum kept in a notebook might look something like this:

Sample Memorandum to the File

Teacher: Willie Makit
School: Theodore Inskeep Technical School
Grade: 8th
Subjects: Health & Sex Education, American History

9/20/81 — Did not sign in upon arriving at school. Arrived at 8:10 — 20 minutes late. (P.P.)

9/26/81 — In hallway near cafeteria at lunchtime. Did not challenge student who was in hall without permit. (P.P.)

10/2/81 — Talking with Bettie Wont in his classroom 45 minutes after school out with door closed. (P.P.)

10/3/81 — Talking with Bettie Wont in classroom 30 minutes after school out. No other students around and door open. (P.P.)

10/9/81 — Arrived 10 minutes late to school. Did not sign in until being reminded to do so by secretary Ida Spy. (P.P.)

10/10/81 — Failed to turn in weekly lesson plans by 4 p.m. (P.P.)

10/17/81 — Failed to turn in weekly lesson plans by 4 p.m. (P.P.)

10/21/81 — Arrived 20 minutes late to school. (P.P.)

10/27/81 — Did not sign in upon arrival. Secretary Ida Spy said arrived about 5 minutes late. (P.P.)

11/1/81 — Failed to turn in weekly lesson plans by 4 p.m. (P.P.)

Specific Incident Memoranda

If the administrator observes an incident involving an employee, or has a complaint from a third party, a specific incident memorandum may be appropriate. This memorandum should be sent *only* after the administrator holds a conference with the employee at which the incident is discussed and the facts and all viewpoints are considered. The memorandum should summarize the third party's complaint, the administrator's observation(s) of action by the employee, the employee's response, the administrator's determination, and any directives and/or reprimand to the employee. If the incident is so serious that termination is to be recommended immediately, the memorandum should so state. To avoid talking with an employee about an incident, in the hope that it will go away, is self-defeating and naive. Thirty minutes spent when the incident occurs may lead to corrective action by the employee and could help to avoid a two-day hearing or a week-long trial at some later date.

Also, the failure to confront problems, infractions, and deficiencies at the time they occur can greatly weaken a later action recommending termination. For example, suppose several incidents occur in the fall of a school year but are not mentioned to the employee by the administrator. An attempt to use those incidents as evidence for a termination recommendation in the spring of that school year may prove to be unsuccessful. The employee can claim unfair treatment because the reason(s) for termination were never disclosed during the school year. This makes the administrator appear to be acting in an arbitrary or devious manner and could call into question the grounds used to justify termination.

It is a good practice to have the employee acknowledge receipt of the specific incident memorandum by signing the copy. If the employee does

not agree with the facts stated in the memorandum or the action taken, the employee should be given the opportunity to respond in writing either on the memorandum itself or through the submission of a separate document. This can be accomplished by inviting the employee to prepare a written statement within a specified time concerning any differences of fact or opinion expressed by the administrator in the memorandum. For example, the final paragraph of a memorandum might conclude, "If you disagree with the facts or conclusions stated in this memorandum, please advise me in writing no later than (date) so we can meet and work out any differences." By so doing, any disagreement can be noted, and the differences can be resolved promptly. In serious situations where the employee has proven to be recalcitrant or is of questionable integrity, one might consider a final sentence such as "If you do not respond, I can only assume you agree with the facts as stated in this memorandum." A statement of this nature should be used sparingly because it tends to polarize the positions of the administrator and the employee, thus making future communications more difficult.

If the specific incident concerning the employee comes from a third party such as a parent or student, care must be taken to examine fully the facts and determine whether the third party's information is correct. It is improper and legally disastrous to base a decision to terminate on information from a third party when the truthfulness of the allegation has not been established.

Upon the receipt of a third-party complaint, the administrator should make an investigation and conduct whatever informal hearings are necessary to determine whether the complaint is true. The preferred practice to follow when one receives a complaint from a third party is to get the complaint in writing. The third party should be advised at this point that if adverse action is taken against the employee based on this incident, the third party must be available to testify before the board, an arbitrator, or a court. If the third party will not agree to appear as a witness, other independent evidence must be available to establish the relevant facts at a hearing; otherwise, action adverse to the employee should not be undertaken.

The next step is to get the employee's side of the story. If there is a discrepancy in the third party's story and the employee's story, the administrator should interview any witnesses and attempt to determine what occurred. It may be necessary to have the employee confront the complainant in an informal conference to determine what actually occurred. Although the results of a polygraph test cannot be used in a termination proceeding in most states, in really serious situations an employee might be allowed voluntarily to take a polygraph test to aid in establishing innocence. When the reasons are very compelling, consideration can be given to requiring the employee to give a sworn

statement or to submit to a polygraph examination as a condition of continued employment. This process should be used sparingly and only with the advice of legal counsel and board policy.

In many cases it will simply not be possible for the administrator to have agreement concerning what happened, so the administrator has to act as a judge and determine whose story to believe. If agreement is eventually reached or if the administrator has enough information to make factual determinations, a specific incident memorandum can be prepared. Such a memorandum should explain the findings made by the administrator and the reasons for those findings. Specific directives or suggestions to the employee might also be included in the memorandum if appropriate.

It is important to establish on the face of the specific incident memorandum that the employee received a copy of the document. In employee termination hearings, a dispute will often arise over whether the employee ever received a copy of some document. It is essential, therefore, to have the employee sign the memorandum acknowledging its receipt. If an employee refuses to sign, the administrator should have an adult witness present who will sign the document verifying that the employee was given a copy of the memorandum but refused to sign it acknowledging its receipt. It should be made clear to the employee, either on the face of the document or orally, that his or her signature, verifying that a copy of the memorandum has been received, does not constitute agreement with its contents. As noted previously, the employee should be given the opportunity to respond in writing to the memorandum.

Giving the employee an opportunity to disagree with the contents of the memorandum by responding in writing puts the employee on notice of the facts and findings stated in the memorandum. If no disagreement is noted in writing by the employee, a presumption is created that the contents of the memorandum accurately reflect the facts. A judge examining this situation will normally take the view that a reasonable person who received such a memorandum and who disagreed with the facts would have prepared a written response to the items with which there was disagreement. If the employee does not respond within the time stated in the memorandum, it becomes difficult to argue at a termination hearing that the employee now disagrees with the content of the memorandum or disagreed when the memorandum was written. A specific incident memorandum might be written as follows:

Sample Specific Incident Memorandum

To: Willie Makit

From: Paul Principal

Date: October 23, 1981

Re: Allegation of misconduct made by Mrs. Harvey Wont, Mother of Bettie Wont, Student

You will recall that Mrs. Wont called me on October 20, 1981, to complain that you had molested her daughter, Bettie, while you were visiting their home one afternoon after school. No one else was at their home besides you and Bettie. Specifically, Mrs. Wont alleged that Bettie stated that you embraced her and then began fondling her private parts while suggesting that the two of you become "better acquainted" upstairs.

I called you in on October 21, 1981, to discuss the matter with you. You told me that you had not molested Bettie in any way and had made no suggestions to her concerning getting "better acquainted." You told me that you had taken Bettie to her home that afternoon, but only because Bettie requested that you do so. You also told me that the reason for taking Bettie home was because she was very upset about not making the cheerleading squad and seemed to want to talk to someone. I asked you about the times I had seen you in your classroom with Bettie after the other students had been dismissed. You responded that you had, in fact, on several occasions counseled her about various matters and that she had come to regard you as a friend and confidant. In regard to the specific alleged incident, you stated that you and Bettie had been talking and that you were ready to leave, when she came over and embraced you. She then told you she loved you and wanted you to stay with her. You said you told her that you could not do so and left.

On October 22, 1981, I had a conference with Mrs. Wont, you, and Bettie. After a long discussion and after careful questioning, Bettie admitted that you had, in fact, not molested her or made suggestions to her. She said she was angry at you for not staying with her, so she told her mother those things. Mrs. Wont apologized for the incident, as did Bettie.

Based on this investigation, I have determined that you did not in any way molest Bettie Wont. However, I do find that your conduct in this matter is not totally in keeping with proper professional standards. You are surely aware that girls of Bettie's age are very impressionable. You should be very careful in your relations with female students not to encourage any infatuations they may hold. Furthermore, unless absolutely essential, you should avoid driving a female student home without someone else being present. More importantly, to avoid situations like this from arising, you should not visit a female student in her home when her parents are not there. I will expect you to abide by these directives. I am also transferring Bettie from your Health and Sex Education Class into Felix Feelgood's class.

Because of this incident, I think both of you will be more comfortable with this move.

If you disagree with the facts, conclusions, or directives contained in this memorandum, please advise me in writing no later than _____, so we can meet and work out any differences.

/s/ _____
Paul Principal

I have received a copy of this memorandum.

/s/ _____ (Date) _____

Visitation Memoranda

It is a common practice to summarize a visit to a teacher's classroom with a visitation memorandum. The content of such a memorandum should be reviewed with the teacher, and the teacher should be given a copy. Suggestions for improvement should be made in a conference and noted in the memorandum. A visitation memorandum may be used in the eventuality of a termination hearing, but the results of a visitation are normally compiled in a summary memorandum or an assessment document.

Summary Memoranda

Summary memoranda are ideal ways to record the results of conferences covering several incidents, a series of classroom visitations, or overall employee performance. Through such memoranda, the matters referred to in the file memoranda (which may not have previously been given to the employee) can be incorporated; matters not reflected in other memoranda can be put in writing; directives can be given; understanding of standards can be established; and evidence that a conference was held and the subjects discussed can be established. A copy of each summary memorandum should be given to the employee, and the employee should acknowledge receipt. As with the specific incident memorandum, the employee should be given an opportunity to put in writing any differences in the facts and conclusions stated in the memorandum. If an employee disagrees and files a response, a subsequent conference should be held with a follow-up memorandum to try to resolve any differences that may exist. The same comments applicable to the specific incident memoranda are also applicable to summary memoranda, with the major difference being that summary memoranda are designed to cover general conferences with the employee on several matters rather than

only on a specific incident. A summary memorandum with specific directives might be written as follows:

Sample Summary Memorandum with Specific Directives

To: Willie Makit

From: Paul Principal

Date: May 5, 1983

Re: Conference of May 1, 1983

Over the past two years you and I have discussed your performance as a teacher at Theodore Inskeep Technical School. We have had numerous conferences to discuss specific incidents that have arisen as well as our scheduled assessment conferences. As we neared the end of this school year it became apparent to me that you were continuing to experience difficulties in complying with directives and in meeting the school district's standards in certain instructional and noninstructional areas. With this in mind, we had a conference in my office on May 1, 1983, to discuss your performance. At that conference we discussed the following areas, and I gave you specific directives for improvement.

1. Preparation and submission of lesson plans. Since your arrival two years ago, you have experienced difficulty in submitting lesson plans in a timely fashion. You have acknowledged this on prior occasions such as in our conferences of November 5, 1981; March 16, 1982; and September 30, 1982. In this conference you again acknowledged this was a problem, but you stated that your night classes at graduate school kept you from consistently completing the lesson plans on time. You stated that you felt this was a legitimate excuse. I explained to you that, while taking further coursework was a good thing, its demands do not excuse failure to meet the requirements of your job. I advised you that I must have the clearly written and completed lesson plans in my box by 4:00 p.m. every Friday.

2. Teacher-student relations. This is another area of continuing difficulty. We discussed your initial failure to challenge a student for a hall pass on November 5, 1981; your failure to discipline students for setting fire to a trash can in your room on January 15, 1982; and your disruptive classes, which caused Mr. Teacher and Ms. Teacher to complain on numerous occasions in the spring of 1982. We discussed these incidents in detail at your evaluation conference on March 10, 1982. You have acknowledged that these incidents occurred and have promised

to make corrections, but you continue not to ask students in the hall for passes (January 6 and 25, 1982; and April 1, 16, and 25, 1983), and your classes have continued to be distractive to other teachers and students. As we discussed, these types of incidents and your failure to deal with them cannot continue. You must make the necessary corrections immediately.

3. Classroom work and the issuance of grades. As we discussed, this is the most serious problem you have as a teacher. At the end of four nine-week grading periods you were from one to two days late in getting your grades into my office (October 15, 1981; April 1, 1982; October 17, 1982; and March 30, 1983). After each of these incidents I had a conference with you, and, once again, you blamed your night classes for the delay. I once again explained that that reason was not sufficient. After the last of these conferences, April 2, 1983, you acknowledged that you had no daily or test grades for Health Education Period 1 and only two grades for Health Education Period 3. As has been explained at the first faculty meeting of each year and as contained on page 6 of the Faculty Handbook, you must have at least six daily grades and two test grades for each nine-week reporting period. I specifically directed you to comply with these requirements.

Mr. Makit, the situation is serious. As I told you, I recommended your employment for the 1983-84 school year only because of your assurances that you will correct these deficiencies and follow these directives and school board policy. You have been given a growth plan in connection with your assessment, and numerous aids have been made available to you. As you and I discussed, I want this to work out so you become a successful teacher and that you continue to teach here. However, if you fail to follow any of the directives we discussed at our conference and which I have outlined in this memorandum, I will have no choice but to recommend that your employment with the district be terminated immediately.

If you have any questions concerning these directives or if you disagree with the facts or conclusions stated in this memorandum, please advise me in writing no later than _____ so we can meet and work out any differences.

/s/ _____ _____
Paul Principal

I have received a copy of this memorandum.

/s/ _____ (Date) _____

The Assessment or Evaluation Document

The assessment or evaluation document should be completed as prescribed by the policies and procedures of the school district. A summary narrative or memorandum ideally should supplement each negative assessment noted in the document. This can be done on the assessment document or on an attachment. If the assessment is such that the employee might be terminated if no improvement is shown, the employee should be advised that failure to improve could result in a recommendation for termination. The failure to warn of possible termination can result in claims by the employee that he or she would have improved if advised of the seriousness of the situation. Furthermore, it is wise to include instructions or specific directions for improvement. Such a practice not only is helpful to the employee, but, if the administrator's actions are later questioned, it also strengthens the argument that the employee has been treated fairly. Through the use of such evaluation documents, the employee will be put on notice that he or she has deficiencies which could result in a recommendation to terminate should those deficiencies not be remedied according to the instructions given for improvement.

In order to avoid difficulties with ratings on the evaluation, an employee should not be rated too highly when initially employed or assigned to a school. Rather, a straightforward and truthful evaluation should be made. It is much easier to raise evaluations in subsequent years than it is to lower high ones. Furthermore, a fair system of evaluation requires the setting of standards and expectations at the beginning of the school year, with the administrator following through with the implementation of those standards through the evaluation process.

Documentation in General

In preparing any memorandum, report the facts and avoid conclusionary statements not supported by the facts. For example, in a classroom visitation memorandum, reporting that a teacher's classroom was "disorderly," without any further explanation, is not very helpful. Rather, a principal should note such specifics as seeing three children talking during class recitation and one child playing in the back of the room. The principal should note that these acts were unnoticed by the teacher or were not corrected by the teacher. Furthermore, inflammatory words should not be used. For example, rather than characterize an action as "insubordination," the action should be factually described, and should be referred to as failure to comply with official directives and/or school board policy.

It is the specificity of the memorandum and not the quantity of words or the number of pages that counts. Directives in a memorandum should

be clear, to the point, and not couched in jargon. For example, when directing a sometimes tardy employee to arrive at school on time, state: "You are required to be at school by (time) and you will be expected to have signed in by that time," rather than, "You are required to be at school on time." Instead of stating, "Your lesson plans are due once a week," one might say, "Your lesson plans are due in my box by 4:00 p.m. on each Friday, and I expect you to have them there beginning this Friday." When written in a constructive atmosphere, precise directives like these tend to clear the air and avoid real or imagined confusion about what is expected.

The specific incident memorandum, the summary memorandum, the visitation memorandum, and the assessment document should be written in the first person and personalized as much as possible. The use of "we" or "they" should be avoided unless two or more persons are involved in the supervisory roles and then the others should be identified by name. The key to the success of a documentation system is to provide an opportunity for the administrator and the employee to sit down and mutually work out the problem and determine the future actions of the employee.

Care should be taken to treat all employees alike, especially when dealing with absences and tardiness. It is destructive and embarrassing to have a teacher's attorney present a school's sign-in sheet at a hearing and show that other teachers have been tardy or absent more often than the teacher who is being proposed for termination for excessive tardiness or absences.

Another thought to keep in mind is that one should never write a memorandum to an employee when one is angry. It is much better to reflect for a day or so or to call in a third party to review a memorandum prior to sending it in circumstances where the administrator is angry or personally involved. By doing so, the administrator can avoid statements that might later be regretted, especially when the tone of the memorandum is being scrutinized by a judge or jury. In order to be effective, however, any memorandum must be prepared and sent to the employee soon after the incident and the subsequent conference occurs. Under no circumstances should a memorandum be prepared after the decision to terminate has been made and then backdated to reflect the incident on which the proposed termination will be based.

As in all employee matters, the evaluator should be careful to ensure that the employee feels he or she has been fairly treated. One should remember that if the employee's performance does not improve and a recommendation for termination is made, the fairness of the process will be judged by the members of the board and, possibly, by a state commissioner of education, an arbitrator, a judge, or a jury. In evaluating whether an employee has been treated fairly, one should attempt to view

it from the perspective of a reasonable person who, after receiving all the facts, determines whether the process was fair. Another helpful standard for judging fairness is for the administrator to treat the employee as the administrator would like to be treated in the same circumstances.

Normally, the only documents that would be used as evidence at a termination hearing are summary memoranda and the evaluation or assessment instruments. Occasionally, specific incident and visitation memoranda might be used; however, it is a better practice to incorporate these types of memoranda and include them in a subsequent summary memorandum or evaluation instrument. If the employee has not received a copy of a file memorandum, it should not be used as evidence at a hearing. But it can be used to refresh the administrator's memory while testifying about the specific facts of an event. Again, if summary memoranda properly reflect the incidents recorded in the file memoranda, the file memoranda should never have to be referred to at a hearing.

Factors to Consider in Termination Proceedings

If an employee's performance does not improve to an acceptable level or if the employee does not comply with administrative directives and board policies, the administrator will have to determine whether to recommend termination. Before a final recommendation is made to the board, the employee's immediate supervisor and the next-level administrator should hold a conference with the employee. The employee should be confronted with the inadequacies or problems that have been identified and be given an opportunity to respond. This is a hedge against misunderstanding the basic reasons for the proposed termination, and it provides an opportunity to consider any additional facts or viewpoints an employee may wish to present. With this final effort to examine the situation more closely, there could be a reconsideration as to whether termination is the proper alternative. For example, if there is a personality conflict between the administrator and the employee, rather than a professional performance problem, a transfer to another school or department might be appropriate.

If it is determined after the conference with the employee that there is not sufficient evidence to support a termination, or the administrator's supervisor feels the employee can improve and become successful, a recap and summary memorandum of the conference can be prepared setting out specific standards and directives for the employee and also stating specific policies that, if violated, could result in a recommendation for immediate termination in the future.

If, after hearing the employee's side of the story, the administration decides to go forward with the recommendation for termination, the employee should be advised of this decision and offered an opportunity

to resign. If there are other consequences of resignation such as the forfeiture of future employment opportunities, this should be made clear. To help avoid "constructive discharge" (i.e., forced resignation) claims, the employee, if choosing not to resign, should be advised of the right to a hearing before the board (if applicable under the contract or board policies). A resignation must be voluntary, and it is for this reason that it is advisable to have the administrator's immediate supervisor present at the meeting so any discussions concerning resignation can be witnessed. Providing the employee with an opportunity to resign gives the employee a professionally acceptable avenue of escape prior to the recommendation for termination.

If, after the conference with the employee, the administrator and supervisor determine that a termination recommendation should be made, it should be prepared for review by the school attorney. When the recommendation is made, the administration should submit to the school attorney a letter to be sent to the employee setting out the proposed termination. Also at this time, again for approval by the school attorney, the administration should prepare a statement of reasons supporting the proposed termination and a list of witnesses, together with their testimony, which will be presented if the employee requests a hearing before the board. The documents that support the reasons for the proposed termination should also be submitted at this time. The preparation of these letters and the gathering together of the documents prior to presenting the proposed termination to the board will aid the administrator in evaluating all facts and in determining whether a termination recommendation really should be made. The procedures also help ensure that the administrator remains in control of the employment situation and gives the administrator confidence in carrying out unpleasant but necessary personnel procedures.

Conclusion

Like all personnel procedures, the documentation system described here is not fail-safe. Since it must be implemented by humans, it is subject to error. However, this system does provide an opportunity for an administrator to communicate effectively with employees about their performance, it is hoped to improve it, but if necessary to provide the proper documentation for termination. In working with this system, the school board members, the state commissioner of education, arbitrators, judges, or jurors will evaluate the termination recommendation on the basis of fairness and reasonableness. To ensure an effective documentation system, administrators should keep in mind the following action steps:

1. Develop and adopt an educationally justifiable evaluation system and implement it.
2. Provide inservice for all administrative personnel in supervisory positions on the evaluation policies and the documentation system described in this chapter.
3. Apply the school's evaluation policy and documentation system in a way that preserves the personal dignity of employees and treats them like the supervisory administrator would expect to be treated in similar circumstances.

Footnotes

1. For a sample case illustrating the importance of documentation, *see* Childers v. Independent School Dist. No. 1, 645 P.2d 992 (Okla. 1982).
2. The system recommended in this chapter is only one possibility. For other possible documentation systems, *see* Ronald Ruud and Joseph Woodford, *Supervisor's Guide to Documentation and File Building for Employee Discipline* (Crestline, Calif.: Advisory Publishing, 1982); Chester Nolte, *How to Survive as a Principal* (Chicago: Pluribus Press, 1983), chap. 7; and William C. Carey, *Documenting Teacher Dismissal: A Guide for the Site Administrator* (Salem, Ore.: Options Press, 1981).